

# FEDERAL COMMUNICATIONS COMMISSION

445 12<sup>th</sup> Street SW  
WASHINGTON DC 20554

MEDIA BUREAU  
AUDIO DIVISION  
TECHNICAL PROCESSING GROUP  
APPLICATION STATUS: (202) 418-2730  
HOME PAGE: <http://www.fcc.gov/mb/audio/>

PROCESSING ENGINEER: Dale Bickel  
TELEPHONE: (202) 418-2700  
FACSIMILE: (202) 418-1411  
MAIL STOP: 2-B450  
INTERNET ADDRESS: [dale.bickel@fcc.gov](mailto:dale.bickel@fcc.gov)

August 31, 2006

Victor A. Michael, Jr., President  
Cedar Cove Broadcasting, Inc.  
1063F Big Thompson Canyon Road  
Loveland, CO 80537

In re: KKGN (FM), Eaton, CO  
Cedar Cove Broadcasting, Inc.  
Facility ID No. 84104  
Construction permit application BPED-20060414AAQ

Dear Mr. Michael:

This letter refers to the above-captioned construction permit application for noncommercial educational (NCE) station KKGN (FM), Eaton, CO, and its request for waiver of Section 73.515 of the Commission's rules. For the reasons explained below, the request for waiver will be denied and the application will be dismissed.

Although nominally licensed to Eaton, CO, KKGN presently provides 60 dBu service in an area southwest of Cheyenne, WY. KKGN's licensed operation on Channel 205 provides no 60 dBu coverage over any portion of the station's community of license, Eaton, CO. At the time the station's original construction permit application was filed (November 12, 1996, application BPED-19961112MF), no rule then existed requiring a noncommercial educational station in the lower portion of the FM band to cover any portion of its community of license. Subsequently, the Commission adopted Section 73.515, requiring a noncommercial educational applicant to specify coverage to at least 50% of the community of license. KKGN's initial construction permit BPED-19961112MF was granted pursuant to a limited exemption to this rule adopted by the Commission to facilitate the processing of specific groups of noncommercial educational applicants.<sup>1</sup>

The proposed 34.9 km site change and the channel change (from Channel 205 to 204) still would not allow KKGN to cover any of Eaton with a 60 dBu signal.<sup>2</sup> On the other hand, the changes would allow KKGN to improve the station's coverage within Cheyenne, WY.

---

<sup>1</sup> See 1998 Biennial Regulatory Review – Streamlining of Radio Technical Rules in Parts 73 and 74, Second Report and Order, FCC 00-368, 15 FCC Rcd 21469, 21669-70 (2000) (hereafter “*Technical Streamlining Order*”), and Reexamination of the Comparative Standards for Noncommercial Educational Applicants, FCC 01-64, 16 FCC Rcd 5074, 5085 n.25 (2001) (hereafter “*NCE Order*”) (establishing criteria for comparing NCE applications and granting a waiver of Section 73.515 to “closed” groups, i.e., those groups of mutually exclusive applications [identified in Appendix D of the *NCE Order*] which had been pending for a considerable time and were no longer subject to additional competing applications). Application BPED-19961112MF was identified as belonging to one of the eligible longstanding “closed” groups of mutually exclusive applications.

<sup>2</sup> If anything, the signal strength over Eaton would be *reduced*, as predicted using the standard contour prediction method. The application includes a Longley-Rice analysis to show that the station's proposed 34 dBu contour would cover Eaton, and that the 54 dBu contour using the same method would come within 10 km of Eaton. These figures are meaningless because neither contour guarantees continued interference-free service from KKGN within Eaton. Moreover, we have elsewhere refused to consider supplemental analyses where the community of license lies outside the station's service contour as predicted by the standard contour prediction method. See *Letter re: KDAY (FM), Independence, CA*, 9 FCC Rcd 2754 (1994). Consequently, we will not give the supplemental analysis any consideration here.

A waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.<sup>3</sup> The applicant for waiver “must plead with particularity the facts and circumstances which warrant such action.”<sup>4</sup> When the Commission adopted Section 73.515, it found the rule to be in the public interest because an NCE FM “station cannot adequately serve its community of license unless it places a listenable and protected signal over at least a portion of such community.”<sup>5</sup> The Commission determined that the new rule would apply to all applications of authorized NCE FM stations, including modification applications of NCE FM stations with facilities that do not place a 60 dBu signal over 50 percent of the station’s community of license. As the Commission stated in the *Technical Streamlining Order*:

We proposed in the Notice to apply the new rule only to applications filed after the effective date of the new rule. On further reflection, however, we now believe that licensing of NCE FM stations that do not meet this coverage minimum is contrary to the public interest. Accordingly, the coverage requirements set forth herein will apply to *all applications* pending as of the release date of this Order or filed thereafter.<sup>6</sup>

The waiver provision in the subsequent *NCE Order* was intended to help resolve the conflicts among the many mutually exclusive NCE applications filed prior to adoption of Section 73.515.<sup>7</sup> Upon grant of KKGK’s construction permit BPED-19961112MF, the limited purpose of the waiver provision was served. The *NCE Order* did not include any similar waiver provision concerning future modifications of such stations, and footnote 25 makes no mention of “grandfathering”. KKGK offers no explanation as to why applicants which benefited from a one-time waiver policy should be “entitled” to additional waivers while all other prior authorized stations should not be.

KKGK also has failed to demonstrate that a waiver of Section 73.515 would serve the public interest by merely improving the station’s service “toward” its community of license. The Commission clearly stated that “public interest concerns are raised when no portion of a community of license is covered by an NCE FM Station’s service contour.”<sup>8</sup> Signal improvements without the required signal coverage in the community of license do not automatically make this application consistent with Section 307(b).<sup>9</sup> As explained by the Commission in the *Technical Streamlining NPRM*, proposing the new coverage requirement, “[t]he association of a broadcast station with a community of license is a basic tenet of the Commission’s allocation scheme for broadcast stations.”<sup>10</sup> In

---

<sup>3</sup> See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969). See also 47 C.F.R. § 1.3 (rule provisions may be waived “for good cause shown”); 47 C.F.R. § 73.3566(a) (requests for waiver “shall show the nature of the waiver or exception desired and shall set forth reasons in support thereof”).

<sup>4</sup> *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664, 665-66 (D.C. Cir. 1968).

<sup>5</sup> *Technical Streamlining Order*, 15 FCC Rcd at 21670.

<sup>6</sup> 21 FCC Rcd 21670 (emphasis added).

<sup>7</sup> The Commission stated: “To ensure efficient processing of NCE FM applications, we waive the city grade coverage requirement recently adopted in MM Docket No. 98-93 [*Technical Streamlining Order*] for all mutually exclusive radio applications subject to the comparative procedures adopted herein. Absent a waiver, these radio applicants would have been required to amend their applications by February 19, 2001 to provide a predicted 60 dBu strength signal to at least 50% of their communities of license or to 50% of the population of the community.” *NCE Order*, 16 FCC Rcd at 5085 n.25.

<sup>8</sup> *Technical Streamlining Order*, 15 FCC Rcd at 21670.

<sup>9</sup> Section 307(b) of the Act requires the Commission “to provide a fair, efficient, and equitable distribution of radio services” among states and communities in considering applications for licenses, modifications, and renewals.

<sup>10</sup> *Notice of Proposed Rule Making* in MM Docket No. 98-93, 13 FCC Rcd 14849, 14876 (1998) (“*Technical Streamlining Notice*”) (citing 47 U.S.C. § 307(b)).

adopting the new rule, the Commission concluded that requiring an NCE Station operating on a reserved channel to provide a 60 dBu signal to at least 50 percent of its community of license or reach 50 percent of the population within the community, "balances the Commission's mandate under Section 307(b) of the Act with the service, technical, and financial realities of operating NCE FM stations."<sup>11</sup> The Commission chose "to measure an NCE FM station's service to its community of license on the basis of 60 dBu signal strength"<sup>12</sup> because, *inter alia*, "this rule will help ensure that at least half of the community receives protected service on a permanent basis" while "ensur[ing] sufficient flexibility in siting facilities and reaching target audiences."<sup>13</sup> Here, a grant of KKGN's requested waiver, which would not cover any of the community of license, would fall far short of these Section 307(b) principles.

Accordingly, KKGN's request for waiver of Section 73.515 IS DENIED, and application BPED-20060414AAQ IS DISMISSED.

Please note that when the Commission opens an application filing window period for new and major change NCE applications, you may then file a major change application to seek a change in facilities and the community of license, specifying a community that will allow KKGN to comply with Section 73.515. At this time, no date has been set for an NCE application filing window.

Sincerely,



Dale E. Bickel  
Senior Electronics Engineer  
Audio Division  
Media Bureau

cc: Gammon and Grange, P.C.  
: Communications Technologies, Inc.

---

<sup>11</sup> *Technical Streamlining NPRM*, 15 FCC Rcd at 21670.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* See also *Technical Streamlining Notice*, 13 FCC Rcd at 14876 (stating that "[w]here no part of the community of license lies within the 60 dBu protected service contour, the community is at risk of losing all service from the station licensed to it should a second station obtain an authorization for new or modified facilities that precludes the ability of the first station to place its 60 dBu contour over the community of license").